

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:

Amendment of Section 73.202(b).
Table of Allotments
FM Broadcast Stations
(Hawthorne, Wisconsin and "Counter-Proposed" Superior, Wisconsin)

RM-9105
MM Docket No. 97-180

John A. Karousos
Chief, Allocations Bureau
Policy and Rules Division
Mass Media Bureau

To the Commission:

**FINAL REPLY COMMENTS TO ASSIGN A NEW F M STATION AT HAWTHORNE,
WISCONSIN**

Comes now, WTRW, Incorporated, licensee of Standard Broadcast Station WTRW-AM, Two Rivers, Wisconsin, (hereinafter "WTRW") by its' President Mark Heller, with its' final reply comments to the petition for rulemaking to assign a new FM channel at Hawthorne, WI, by Bruce Elving of Esko, Minnesota as that unincorporated area's first aural service and WTRW's Counter-Proposal to assign same to Superior, Wisconsin, WTRW is responding in a timely manner, as detailed in FCC Report Notice of Proposed Rule Making, released August 15, 1997.

Hawthorne, Wisconsin is an unincorporated village, with approximately 100 inhabitants. The Town of Hawthorne, Wisconsin has a total population of 1,049 residents.

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While the Town of Hawthorne, has it's own Zip Code and Post Office, it relies upon the cities of Superior, Wisconsin and Duluth, Minnesota for hospital care and library service. The Town of Hawthorne is served by a Constable, and does not provide full-time police protection but relies on the Douglas County Sheriff's Department for the Public's Safety. Likewise, the Town of Hawthorne is protected by a volunteer fire department made up of volunteer residents who serve their neighbors.

Superior, Wisconsin, the counter-proposed community, is an established city, has it's own Zip Code and Post Office, and Elementary School, a High School, a University, Churches, Police and Fire protection, an airport, various Civic Organizations including a Lions Club, a Rotary Club, a Kiwanis Club and a Chamber of Commerce and is a vibrant community with 27,134 inhabitants. Therefore, petitioner states that Superior qualifies as a "community" for allotment purposes, citing Beech Mountain, North Carolina, 6 FCC Rcd 5835 (1991). It is located in Douglas County, and it's major employers are the iron ore and lumber trades. It currently has one commercial FM radio service and one non-commercial FM service allocated to its' city. There is no known "major employer" if any, in the unincorporated area of Hawthorne, Wisconsin.

Whereas, Section 307(b) of the Commission's Rules directs that "(e)very community of 'appreciable size' ... is presumed by the Commission to need at least one radio station for local self-expression." Ruarch Associates, 56 RR 2d 1593, para 2 (Rev. Bd. 1984) *aff'd*, 101 FCC 2d 1358 (1985) (emphasis added). Where a "transmission service disparity already exists, a different presumption applies, namely that the community which has no transmission service has a greater need than the community that already has one (or more)." *Id.* @ para 5. (emphasis added). However, these are rebuttable presumptions, and the Commission has refused to give very small communities a dispositive Section 307(b) presumption in a multiple party

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proceeding. Reeder v. FCC, 865 F.2d 1298 (D.C. Cir. 1989).¹

Superior, with a population of 27,134 residents, outweighs the needs of the 100 persons at Hawthorne. The unincorporated area of Hawthorne's need for a first aural service does not in fact, warrant a dispositive Section 307(b) preference over the third FM service as counter-proposed to Superior, Wisconsin. Since the only commercial FM licensed to Superior is owned by a licensee who also controls a television signal in the Superior market, the Commission by granting the allocation to Superior will allow an independent voice to serve that community, and WTRW would enthusiastically apply for a construction permit for an FM station at Superior, if an allocation were made available.

The original Petitioner, Bruce F. Elving Ph.D. makes comments which are of little impact on the Commission's guidelines of whether or not a community is worthy of receiving a frequency allocation. Mr. Elving's pessimistic view on the population trends of Superior, Wisconsin and his slandering that community for having "taverns" and "Superior...enjoy more liberal laws about alcoholic beverages, with bars open later than in Minnesota", serves no use to the Commission. Extrapolating Mr. Elving's comments, then, Wisconsin should have no radio stations. If Mr. Elving's comments that Superior, Wisconsin is a "poor sister" to Duluth, Minnesota, then shouldn't Superior, Wisconsin be allocated a new FM frequency to help that city improve its image?

Mr. Elving, in his reply comments states, "I do not envision getting a construction permit, and then even before the station is built applying for an upgrade in the station

¹ Cf. FM Channel Assignments, 51 RR 2d 25, 29 (1983) (favoring a second assignment to a larger community over a first assignment to a very small community is consistent with the Commission's mandate to assign frequencies in a fair and efficient manner.

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class or move to another city, as happens with so many allotments.” WTRW answers by stating it intends to apply for, and if granted a construction permit would construct and operate a station at Superior, Wisconsin, while Mr. Elving in his reply comments wonders if he will even get a construction permit.

Moreover, the Superior proposal presents a more efficient use of the broadcast spectrum because it will have the potential to serve substantially more area and population than the Hawthorne proposal, which is restricted to a site 3.3 miles west.

<u>Community:</u>	<u>Existing:</u>	<u>Proposed:</u>	<u>Counter-Proposed</u>
Superior, WI	217C1, 273C	217C1, 273C	217C1, 273C, 293A
Hawthorne, WI	None	293A	None

The Hawthorne proposal should be dropped, without unduly impeding the fair, efficient and equitable distribution of radio service. The Counter-Proposal to allocate Superior, Wisconsin its third FM radio service serves the Public's interest and needs. Mr. Elving has made comments of pure conjecture and myth about having a suspicion that "Heller does not really want to serve Superior (Wisconsin), but the larger city of Duluth, (Minnesota) across the bay." Mr. Elving must dream of a massive conspiracy, and does not realize that WTRW is a Wisconsin Corporation, Mr. Heller, its' President is a Wisconsin native and has never owned any radio stations in Minnesota. While, Mr. Elving is a long time resident of Minnesota. WTRW wonders how Mr. Elving is allowed to make such unsubstantiated comments, and then state at the end of his reply that "this document is correct and represents my honest feelings." Mr. Elving is not using fact or logic, only slander, innuendo and guesswork common with a soothsayer, not a Ph.D. as he states that he actually is.

Mr. Elving speaks of his proposal for Hawthorne, "provides for realistic city-of-licensing and allows for the maximum population to be served from the site that

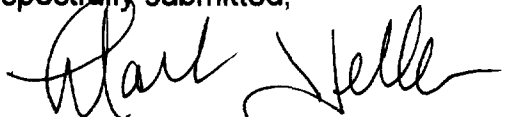
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was originally proposed." Mr. Elving refuses to admit that Hawthorne is NOT a city.

Therefore, WTRW respectfully requests, in light of the above mentioned prior case law, that the Commission amend it's FM table of allotments to allot Channel 293A to Superior, Wisconsin at the coordinates previously proposed for Hawthorne, Wisconsin will provide a 100% city-grade signal over the City of Superior, Wisconsin, and that if such window of opportunity exists to apply for same, WTRW will apply for same.

I hereby certify, that I have read this entire document, and to the best of my knowledge, information and belief, that the foregoing statement is true and correct, that there is good and sufficient reason to support same, and that it is not submitted for delay.

Respectfully submitted,



Mark Heller, President

WTRW, Incorporated

1414 16th Street

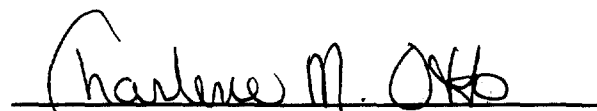
Two Rivers, WI 54241-3031

(414) 794-1800

October 20, 1997.

(seal)

Subscribed and Sworn Before Me this 20th day of October, 1997.



Notary Public. My commission expires

10 / 10 / 99 .

CERTIFICATE OF SERVICE.

**I, Mark Heller, certify that I sent a copy of this document entitled "FINAL REPLY
COMMENTS TO ASSIGN A NEW F M STATION AT HAWTHORNE, WISCONSIN"
upon the following, via first class mail on October 20, 1997:**

**Mr. Bruce F. Elving
P.O. Box 336
Esko, MN 55733-0336**

A handwritten signature in cursive script, reading "Mark Heller", is written over a horizontal line.

Mark Heller